

Schatz



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: G&C Enterprises, Inc.--Reconsideration

File: B-233537.2

Date: May 10, 1989

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### DIGEST

Request for reconsideration of prior decision is denied where protester fails to show any error of fact or law that would warrant reversal of or modification of prior decision.

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### DECISION

G&C Enterprises, Inc., requests that we reconsider our decision in G&C Enterprises, Inc., B-233537, Feb. 15, 1989, 89-1 CPD ¶ 163, wherein we denied its protest of the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DACA51-88-B-0059, issued by the Army Corps of Engineers for the construction of cooling systems at the Pulse Power Center in Fort Monmouth, New Jersey.

We deny the request for reconsideration.

The IFB required each bidder to submit a bid guarantee with its bid. G&C's apparent low bid was accompanied by a guarantee in the form of a bid bond naming Fidelity and Deposit Company of Maryland as the surety and signed by a Mr. Post as the attorney-in-fact. The attached power of attorney, however, named Mr. Post as attorney-in-fact for Firemen's Insurance Company, not for Fidelity, and Firemen's corporate seal was affixed to the bid bond. The Corps concluded that the bid was nonresponsive, because it was unclear which surety the attorney-in-fact intended to bind and, as a result, either surety could deny liability on the bond if the government attempted enforcement. G&C then protested, alleging that the contracting officer knew from prior dealings with Mr. Post that he in fact had authority as the attorney-in-fact to bind Fidelity on bonds. We denied the protest, holding that since the bid bond listed one surety on the face of the bond, but the corporate seal and the attached power of attorney were from another surety, it was unclear from the bid documents which of the sureties

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the attorney-in-fact intended to bind; the bid therefore was nonresponsive.

In its request for reconsideration, G&C reiterates its argument that Fidelity was unequivocally liable on the bid bond because Fidelity was the only surety listed on the bond, Post signed the bond as the attorney-in-fact for Fidelity, and the contracting officer knew that Post was the attorney-in-fact for Fidelity.

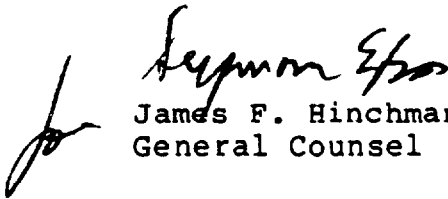
A request for reconsideration must contain a detailed statement of the factual and legal grounds upon which reversal or modification of our prior decision is deemed warranted and must specify any errors of law made or information not previously considered. Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1988). Repetition of arguments made during the original protest or mere disagreement with our decision does not meet this standard. Sal Esparza, Inc.--Request for Reconsideration, B-231097.2, Dec. 27, 1988, 88-2 CPD ¶ 624.

G&C's reconsideration request largely repeats contentions previously raised and considered in our prior decision. In this regard, even if Corps records did indicate that Mr. Post had authority to bind Fidelity for this procurement, the power of attorney attached to the bid bond established that Mr. Post also was authorized to act as attorney-in-fact for Firemen's. As we indicated in our decision, the determinative issue was not whether the attorney-in-fact was authorized to bind Fidelity, but whether it was clear from the bid documents which of the two named sureties the attorney-in-fact intended to bind; notwithstanding G&C's contention to the contrary, it was not clear that Mr. Post intended to bind Fidelity. When the surety's liability is not clear because the identity of the surety to be bound has not been unambiguously manifested on the face of the bid documents, and instead there is conflicting evidence as to the surety's identity, the bond is defective and the bid is nonresponsive. O. V. Campbell and Sons Industries, Inc., B-216699, Dec. 27, 1984, 85-1 CPD ¶ 1.

G&C maintains that our decision is inconsistent with our holding in Hancon Assocs.--Request for Reconsideration, B-209446.2, Apr. 29, 1983, 83-1 CPD ¶ 460. We disagree. In Hancon, although the bid bond identified two sureties, listing Lumbermens Mutual Casualty Company as the surety at the top of the bond and United States Fidelity and Guaranty Company (USF&G) as the surety at the bottom of the bond, only the Lumbermens corporate seal was affixed to the bond and the attached power of attorney only designated the attorney-in-fact to bind Lumbermens. We held that despite

the discrepancy between the sureties listed at the top and the bottom of the bond, the corporate seal and attached power of attorney made it clear that only Lumbermens was bound. Here, by contrast, the conflicting evidence on the face of the bid documents made it impossible for the agency to decide at bid opening which surety was to be bound: while only Fidelity's name appeared on the bond, the affixed corporate seal and attached power of attorney designated Firemen's as the surety. Although G&C contends that we improperly applied Hancon by looking at the subjective intent of Mr. Post in signing the bond to determine whether any surety was liable on the bond, in fact, as indicated above, we only looked at whether Post's intent to bind either one of the sureties that he represented was objectively and unambiguously manifested on the face of the bid documents. It was not, and the bid therefore was nonresponsive.

Accordingly, the request for reconsideration is denied.

  
James F. Hinchman  
General Counsel